

SECOND REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 858**  
**90TH GENERAL ASSEMBLY**

Reported from the Committee on Civil and Administrative Law, April 13, 2000, with recommendation that the House Committee Substitute for Senate Bill No. 858 Do Pass.

ANNE C. WALKER, Chief Clerk

3809L.09C

**AN ACT**

To repeal sections 610.021, 610.022 and 610.027, RSMo Supp. 1999, relating to the sunshine law, and to enact in lieu thereof five new sections relating to the same subject.

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 610.021, 610.022 and 610.027, RSMo Supp. 1999, are repealed and five new sections enacted in lieu thereof, to be known as sections 166.456, 197.760, 610.021, 610.022 and 610.027, to read as follows:

**166.456. All personally identifiable information concerning participants and beneficiaries of accounts established within the Missouri higher education savings program pursuant to sections 166.400 to 166.455 shall be confidential, and any disclosure of such information shall be restricted to purposes directly connected with the administration of the program.**

**197.760. 1. As used in this section, the following terms mean:**

- (1) "Health carrier", the same as such term is defined in section 376.1350, RSMo;**
  - (2) "Public hospital", a hospital organized pursuant to section 81.190, 82.240, 96.150 to 96.228, 205.160 to 205.379, or 206.010 to 206.160, RSMo;**
  - (3) "Payment methodologies", how the units of service to be used as a basis for making payments are defined and the method of determining the specific payment amount per unit of service;**
  - (4) "Public record", the same as such term is defined in subdivision (6) of section 610.010, RSMo;**
  - (5) "Related organization", an entity created by or affiliated with a public hospital, regardless of the degree of common control or governance with such hospital;**
  - (6) "Self-insured health plan", an employee health benefit plan established by an employer or an employee organization, or both, for which the insurance laws of this state are preempted pursuant to the Employee Retirement Income Security Act of 1974.**
- 2. Notwithstanding the provisions of chapter 610, RSMo, to the contrary, the governing body of a public hospital or a related organization of such hospital, or both, may close portions**

**EXPLANATION —** Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

of records and meetings of the entity that it manages or controls if such portions of records and meetings pertain to:

(1) The payment amounts and payment methodologies of its contract proposals to and contract with a health carrier or a self-insured health plan. Information concerning the parties involved and the duration of such a contract shall be a public record;

(2) Discussion and analysis of proposed strategic plans to:

(a) Develop a new health service or new facility;

(b) Expand or revise an existing health service or facility; or

(c) Enter into a shared service arrangement or other affiliation agreement.

Such strategic plans shall be a public record when the governing body of the public hospital or related organization votes to appropriate or expend money specifically to implement such strategic plans;

(3) The amount of compensation that will be or is being paid to a physician under the public hospital's or a related organization's contract proposals to and contracts with the physician. While the compensation amounts of such a contract proposal or contract may be closed, such compensation amounts shall be included in the public hospital's or a related organization's overall financial statements and such statements shall be a public record;

(4) The records closed pursuant to this subsection shall be disclosed pursuant to lawful subpoena.

3. The disclosure of records and meetings of a public hospital, other than those records and meetings which may be closed pursuant to this section, shall be governed by chapter 610, RSMo. This section shall not be construed to prohibit a public hospital from claiming the benefit of any other exemption to chapter 610, RSMo, pursuant to section 610.021, RSMo.

4. Every contract as described in subdivisions (1) and (2) of subsection 2 of this section entered into by the governing body of a public hospital shall become a public record two years following the termination of such contract, at which time it shall be subject to disclosure pursuant to section 610.023, RSMo. Other contracts entered into by the governing body of a public hospital shall be subject to disclosure pursuant to subdivision (12) of section 610.021 and 610.023, RSMo.

610.021. Except to the extent disclosure is otherwise required by law, a public governmental body is authorized to close meetings, records and votes, to the extent they relate to the following:

(1) Legal actions, causes of action or litigation involving a public governmental body and any confidential or privileged communications between a public governmental body or its representatives and its attorneys. However, any minutes, vote or settlement agreement relating to legal actions, causes of action or litigation involving a public governmental body or any agent or entity representing its interests or acting on its behalf or with its authority, including any insurance company acting on behalf of a public government body as its insured, shall be made public upon final disposition of the matter voted upon or upon the signing by the parties of the settlement agreement, unless, prior to final disposition, the settlement agreement is ordered closed by a court after a written finding that the adverse impact to a plaintiff or plaintiffs to the action clearly outweighs the public policy considerations of section 610.011, however, the amount of any moneys paid by, or on behalf of, the public governmental body shall be disclosed; provided, however, in matters involving the exercise of the power of eminent domain, the vote shall be announced or become

public immediately following the action on the motion to authorize institution of such a legal action. **Any vote taken on any question deemed closed pursuant to this subdivision shall be by roll call and shall be made public in accordance with other records as provided in this subdivision.** Legal work product shall be considered a closed record;

(2) Leasing, purchase or sale of real estate by a public governmental body where public knowledge of the transaction might adversely affect the legal consideration therefor. However, any minutes, vote or public record approving a contract relating to the leasing, purchase or sale of real estate by a public governmental body shall be made public within seventy-two hours after execution of the lease, purchase or sale of the real estate. **Any vote taken on any question deemed closed pursuant to this subdivision shall be by roll call and shall be made public in accordance with other records as provided in this subdivision;**

(3) Hiring, firing, disciplining or promoting of particular employees by a public governmental body when personal information about the employee is discussed or recorded. However, any vote on a final decision, when taken by a public governmental body, to hire, fire, promote or discipline an employee of a public governmental body must be made available with a record of how each member voted to the public within seventy-two hours of the close of the meeting where such action occurs; provided, however, that any employee so affected shall be entitled to prompt notice of such decision during the seventy-two-hour period before such decision is made available to the public. **Any vote taken on any question deemed closed pursuant to this subdivision shall be by roll call and shall be made public in accordance with other records as provided in this subdivision.** As used in this subdivision, the term "personal information" means information relating to the performance or merit of individual employees;

(4) The state militia or national guard or any part thereof;

(5) Nonjudicial mental or physical health proceedings involving identifiable persons, including medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment;

(6) Scholastic probation, expulsion, or graduation of identifiable individuals, including records of individual test or examination scores; however, personally identifiable student records maintained by public educational institutions shall be open for inspection by the parents, guardian or other custodian of students under the age of eighteen years and by the parents, guardian or other custodian and the student if the student is over the age of eighteen years;

(7) Testing and examination materials, before the test or examination is given or, if it is to be given again, before so given again;

(8) Welfare cases of identifiable individuals;

(9) Preparation, including any discussions or work product, on behalf of a public governmental body or its representatives for negotiations with employee groups;

(10) Software codes for electronic data processing and documentation thereof;

(11) Specifications for competitive bidding, until either the specifications are officially approved by the public governmental body or the specifications are published for bid;

(12) Sealed bids and related documents, until the bids are opened; and sealed proposals and related documents or any documents related to a negotiated contract until a contract is executed, or all proposals are rejected;

(13) Individually identifiable personnel records, performance ratings or records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as

such;

(14) Records which are protected from disclosure by law;

(15) Meetings and public records relating to scientific and technological innovations in which the owner has a proprietary interest;

(16) Records relating to municipal hot lines established for the reporting of abuse and wrongdoing;

(17) Confidential or privileged communications between a public governmental body and its auditor, including all auditor work product; [and]

(18) In preparation for and implementation of electric restructuring **or retail choice, for natural gas or electric service**, a municipal [electric] utility may close that portion of its financial records and business plans which contains information regarding the name of the suppliers of services to said utility and the cost of such services, and the records and business plans concerning the municipal [electric] utility's future marketing and service expansion areas **for natural gas or electric service**. However, this exception shall not be construed to limit access to other records of a municipal [electric] utility, including but not limited to the names and addresses of its business and residential customers, its financial reports, including but not limited to its budget, annual reports and other financial statements prepared in the course of business, and other records maintained in the course of doing business as a municipal [electric] utility, **supplying natural gas or electric service**. This exception shall become null and void if the [state of Missouri fails to implement by December 31, 2001, electric restructuring through the adoption of statutes permitting the same in this state] **general assembly does not adopt, on or before December 31, 2002, legislation authorizing electric utility restructuring; and**

**(19) Financial records, business and marketing plans and other proprietary information submitted as part of a sealed bid, sealed proposal or application for certification as a minority or woman-owned business.**

610.022. 1. [Except as set forth in subsection 2 of this section,] No meeting or vote may be closed without an affirmative public vote of the majority of a quorum of the public governmental body. The vote of each member of the public governmental body on the question of closing a public meeting or vote and the specific reason for closing that public meeting or vote by reference to a specific section of this chapter shall be announced publicly at an open meeting of the governmental body and entered into the minutes.

2. A public governmental body proposing to hold a closed meeting or vote shall give notice of the time, date and place of such closed meeting or vote and the reason for holding it by reference to the specific exception allowed pursuant to the provisions of section 610.021. Such notice shall comply with the procedures set forth in section 610.020 for notice of a public meeting.

3. Any meeting or vote closed pursuant to section 610.021 shall be closed only to the extent necessary for the specific reason announced to justify the closed meeting or vote. Public governmental bodies shall not discuss any business in a closed meeting, record or vote which does not directly relate to the specific reason announced to justify the closed meeting or vote. Public governmental bodies holding a closed meeting must close only an existing portion of the meeting facility necessary to house the members of the public governmental body in the closed session, allowing members of the public to remain to attend any subsequent open session held by the public governmental body following the closed session.

4. Nothing in sections 610.010 to 610.028 shall be construed as to require a public governmental body to hold a closed meeting, record or vote to discuss or act upon any matter.

5. Public records shall be presumed to be open unless otherwise exempt pursuant to the provisions

of this chapter.

610.027. 1. The remedies provided by this section against public governmental bodies shall be in addition to those provided by any other provision of law. Any aggrieved person, taxpayer to, or citizen of, this state, or the attorney general or prosecuting attorney, may seek judicial enforcement of the requirements of sections 610.010 to 610.026. Suits to enforce sections 610.010 to 610.026 shall be brought in the circuit court for the county in which the public governmental body has its principal place of business.

2. Once a party seeking judicial enforcement of sections 610.010 to 610.026 demonstrates to the court that the body in question is subject to the requirements of sections 610.010 to 610.026 and has held a closed meeting, record or vote, the burden of persuasion shall be on the body and its members to demonstrate compliance with the requirements of sections 610.010 to 610.026.

3. Upon a finding by a preponderance of the evidence that a public governmental body or a member of a public governmental body has [purposely] violated sections 610.010 to 610.027, the public governmental body or the member shall be subject to a civil [fine in the amount of not more than five hundred dollars and] **penalty of up to twenty-five thousand dollars, but in no event shall such civil penalty be more than five percent of the total annual budget of the public body. If the court finds that there was a knowing violation of sections 610.010 to 610.027, the court may order the payment by such body or member of all costs and reasonable attorney fees to any party successfully establishing a violation of sections 610.010 to 610.026. The court shall determine the amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the offense, and whether the public governmental body or member of a public governmental body has violated sections 610.010 to 610.027 previously. In the event of multiple defendants for the same violation, the aggregate for the penalties assessed shall not exceed the limits in this subsection.**

4. Upon a finding by a preponderance of the evidence that a public governmental body has violated any provision of sections 610.010 to 610.026, a court shall void any action taken in violation of sections 610.010 to 610.026, if the court finds under the facts of the particular case that the public interest in the enforcement of the policy of sections 610.010 to 610.026 outweighs the public interest in sustaining the validity of the action taken in the closed meeting, record or vote. Suit for enforcement must be brought within one year from which the violation is ascertainable and in no event shall it be brought later than two years after the violation. This subsection shall not apply to an action taken regarding the issuance of bonds or other evidence of indebtedness of a public governmental body if a public hearing, election or public sale has been held regarding the bonds or evidence of indebtedness.

5. A public governmental body which is in doubt about the legality of closing a particular meeting, record or vote may bring suit at the expense of that public governmental body in the circuit court of the county of the public governmental body's principal place of business to ascertain the propriety of any such action, or seek a formal opinion of the attorney general or an attorney for the governmental body.